

ESTTA Tracking number: **ESTTA626866**

Filing date: **09/12/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212640
Party	Plaintiff Buffets, Inc.
Correspondence Address	RYAN R PALMER MONROE MOXNESS BERG PA 7760 FRANCE AVENUE SOUTH, SUITE 700 MINNEAPOLIS, MN 55435 UNITED STATES trademarks@mmblawfirm.com
Submission	Motion to Compel Discovery
Filer's Name	Ryan R. Palmer
Filer's e-mail	trademark@mmblawfirm.com
Signature	/Ryan R. Palmer/
Date	09/12/2014
Attachments	Motion to Compel Discovery and for Sanctions Country Buffet.pdf(1243986 bytes)

Buffets, Inc.,)	Opposition No. 91212640
Opposer,)	
)	
v.)	<u>OPPOSER BUFFETS, INC.'S MOTION</u>
)	<u>TO COMPEL DISCOVERY AND FOR</u>
STARTS CC, INC.,)	<u>SANCTIONS</u>
)	
Applicant.)	
)	

1) Opposer properly served on Applicant Interrogatories and Requests for Production of Documents dated April 1, 2014.

3) Applicant has failed to fully answer Opposer's Interrogatories to Applicant, and has failed to produce all required documents pursuant to the Opposer's Requests for Production of Documents.

5) Opposer's counsel, Ryan R. Palmer, has made a good faith effort to obtain the discovery requested, and has been unable to obtain a response from Applicant.

6) Opposer respectfully asserts that the Interrogatories and Requests for Production of Documents served on Applicant are reasonably calculated to lead to the discovery of admissible evidence that is relevant to the issues present in this proceeding, including likelihood

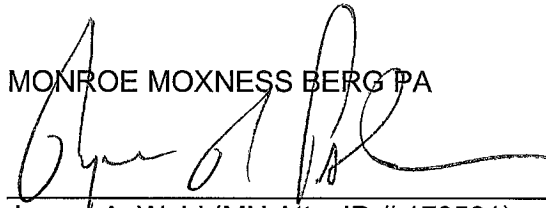
of confusion, abandonment and intent on the part of the Applicant and/or its officers, employees, subsidiaries and/or owners.

7) Opposer requests that the TTAB compel the Applicant to answer all interrogatories and provide all documents as requested. Opposer further requests sanctions be imposed upon Applicant including but not limited to forfeiture of Applicant's right to object to Opposer's discovery requests, extension of the Discovery Period to allow follow up to the interrogatories and documents produced, striking of Applicant's claims, and entering judgment against Applicant and in favor of Opposer. Further still, Opposer requests that the discovery period be extended, at its discretion and with the permission of the TTAB, to allow diligent follow up in light of those answers and to make a competent determination of which potential witnesses amongst the Applicant's owners, employees, former employees, agents and former agents may be deposed to discover admissible evidence.

WHEREFORE, Opposer's motion to compel and for sanctions as may be appropriate should be granted as requested.

RESPECTFULLY SUBMITTED this 12th day of September, 2014.

MONROE MOXNESS BERG PA



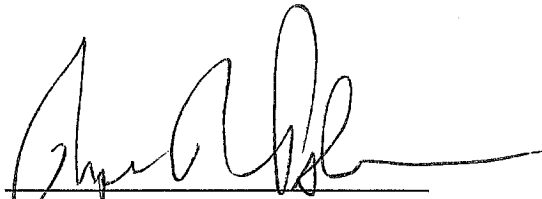
James A. Wahl (MN Atty. ID # 170501)
Ryan R. Palmer (MN Atty. ID # 340650)
7760 France Ave. S, Suite 700
Minneapolis, Minnesota 55435
Telephone: (952) 885-5999
Facsimile: (952) 885-5969

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of OPPOSER BUFFETS, INC.'S MOTION TO COMPEL DISCOVERY AND FOR SANCTIONS UPON APPLICANT by depositing said copy in the United States Mail in a properly addressed envelope with adequate postage affixed thereon to:

Steven J. Nataupsky
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614

This 12th day of September, 2014.



Ryan R. Palmer

MONROE MOXNESS BERG PA
7760 France Ave. S, Suite 700
Minneapolis, MN 55435
(952) 885-5999

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Buffets, Inc.,)	Opposition No. 91212640
Opposer,)	
v.)	<u>OPPOSER BUFFETS, INC.'S BRIEF IN</u>
STARTS CC, INC.,)	<u>SUPPORT OF MOTION TO COMPEL</u>
Applicant.)	<u>DISCOVERY AND FOR SANCTIONS</u>

I. INTRODUCTION

This is an opposition action by Buffets, Inc. (the "Opposer") filed in the matter of Opposition No. 91212640 for the trademark J.J. NORTH'S COUNTRY BUFFET filed by Applicant STARTS CC, Inc. (the "Applicant") on December 13, 2012, and published on May 28, 2014 (the "Application").

The present motion stems from the failure of Applicant to answer interrogatories and to provide documents requested by Opposer in its discovery requests dated April 1, 2014 (herein provided as Attachments 1 and 2) and July 31, 2014 (herein provided as Attachments 3 and 4). Opposer seeks the assistance of the Trademark Trial and Appeal Board ("TTAB" or "Board") to compel the Applicant to fully answer Opposer's interrogatories and provide the documents as requested as required under Rule 26(b) the Federal Rules of Civil Procedure ("FRCP").

First, the Opposer asks the TTAB to compel the Applicant to fully answer all of Opposer's Interrogatories to Applicant dated April 1, 2014 (See Attachment 1).

Second, Opposer asks the TTAB to compel the Applicant to disclose all documents requested pursuant to Opposer's Request for Documents to Applicant dated April 1, 2014 (See Attachment 2).

Third, the Opposer asks the TTAB to compel the Applicant to fully answer all of Opposer's Second Set of Interrogatories to Applicant dated July 31, 2014 (See Attachment 3).

Fourth, Opposer asks the TTAB to compel the Applicant to disclose all documents requested pursuant to Opposer's Second Request for Documents to Applicant dated July 31, 2014 (See Attachment 4).

Opposer further asks that sanctions be imposed, to the extent permissible under TBMP §§403.03 and 527.01(k), including but not limited to forfeiture of Applicant's right to object to Opposer's discovery requests, extension of the discovery period, striking of Applicant's claims, and entering judgment against Applicant and in favor of Opposer.

Opposer submits this Brief in support of its Motion to Compel and For Sanctions.

II. Discovery

The discovery period in this action began on February 1, 2014 and was scheduled to close on July 31, 2014. Applicant received Opposer's initial discovery requests on April 4, 2014 and has not yet fully responded. Applicant received Opposer's second set of discovery requests on August 1, 2014 and has not yet fully responded.

The following is a timeline of events as it relates to the Applicant's obstruction of discovery:

- April 1, 2014 – Opposer served its initial discovery requests upon the Applicant, which were received by the Applicant on April 4, 2014.
- May 5, 2014 – Applicant's responses were due.
- June 6, 2014 – Applicant served incomplete responses to Opposer's initial discovery requests.
- June 25, 2012 – Opposer's counsel sent a letter to Applicant's counsel regarding deficiencies in Applicant's response to Opposer's initial discovery requests.

- July 31, 2012 – Opposer’s counsel sent a second letter to Applicant’s counsel regarding deficiencies in Applicant’s response to Opposer’s initial discovery requests.
- July 31, 2014 – Opposer served its second set of discovery requests upon the Applicant, which were received by the Applicant on August 1, 2014.
- September 1, 2014 – Applicant’s responses to Opposer’s second set of discovery requests were due.
- September 4, 2014 – Applicant served incomplete responses to Opposer’s second set of discovery requests.
- September 5, 2014 – Having not yet received the promised supplementation to Opposer’s first set of discovery requests and no response to Opposer’s second set of discovery requests, Opposer’s counsel sent an email to Applicant’s counsel reminding Applicant of its obligation to respond fully to Opposer’s discovery requests.
- September 8, 2014 – Opposer received Applicant’s incomplete responses to Opposer’s second set of discovery requests.

Applicant’s responses to Opposer’s discovery requests are deficient in the following respects:

Opposer’s first set of discovery requests:

- Applicant has failed to produce documents in response to Opposer’s document requests no. 1 and 2, citing need for a protective order, but without proposing an appropriate protective order, despite Opposer’s counsel’s request.
- Applicant has failed to answer Opposer’s interrogatory no. 7, citing need for a protective order, but without proposing an appropriate protective order, despite Opposer’s counsel’s request.
- Applicant has indicated that it would supplement answers to Opposer’s interrogatories no. 3 and 6, but has not provided such answers.

Opposer’s second set of discovery requests:

- Applicant has objected to Opposer's interrogatory no. 2(c) as not relevant; Opposer has contested this objection and maintains that the requested information is relevant.
- Applicant has failed to produce documents in response to Opposer's document request no. 1, citing need for a protective order, but without proposing an appropriate protective order.
- Applicant has failed to produce documents in response to Opposer's document request no. 4 as not relevant; Opposer has contested this objection and maintains that the requested documents are relevant.

III. ARGUMENT AND CITATION OF AUTHORITY

A. Interrogatories

Applicant's refusal to answer interrogatories is improper. TTAB rules require complete answers to interrogatories under oath within 30 days of service, and authorize a party to bring a motion to compel discovery where a party fails to cooperate in discovery.

Applicant has failed to fully and completely answer Opposer's Interrogatories to Applicant dated April 1, 2014 and July 31, 2014. Opposer asks that the TTAB compel the Applicant to fully answer all Interrogatories as served on Applicant.

"Interrogatories may seek any information that is discoverable under Fed. R. Civ. P. 26(b)(1)". TMBP §405.02. In that, respect, Opposer notes that the Applicant is a privately owned business. Most, if not all, relevant information concerning the Applicant is therefore non-public information and is only available via the discovery process from the Applicant. By wholly failing to respond fully, Applicant has prevented Opposer from obtaining information required to defend against Applicant's claims.

As a general point concerning all of the Opposer's interrogatories, Rule 26(b)(1) is a very broad rule in favor of discovery. A party opposing discovery bears the burden of showing why discovery should be denied, Tequila Centinela S.A. v. Bacardi & Company Limited., 242 F.R.D. 1 (D.C.C. 2007); citing Alexander v. F.B.I., 192 F.R.D. 50, 53 (D.D.C. 2000); see also, Josephs

v. Harris Corporation, 677 F.2d 985 (3rd Circ. 1982). Opposer notes that the Applicant has failed to respond fully and completely. As such, Applicant should be compelled to provide full and complete responses to the Opposer's discovery requests, or be sanctioned by the Board for its failure to respond.

Applicant's relevancy objection to Opposer's Second Set of Interrogatories, no. 2(c) is without merit. The interrogatory states:

2. Describe in detail Applicant's plans on resuming the use of the mark J.J. NORTH'S COUNTRY BUFFET, including, without limitation:

(c) All expenditures Applicant has made from June 2013 to the present to resume the use of the mark J.J. NORTH'S COUNTRY BUFFET.

Applicant has admitted that it has closed its business and is not currently using the mark J.J. NORTH'S COUNTRY BUFFET. Whether Applicant has abandoned its mark, i.e. discontinued use without intent to resume use, may be inferred from the circumstances. 15 U.S.C. § 1127. When non-use of a mark has been established, the mark owner must produce objective evidence establishing intent to resume use of the mark within a reasonably foreseeable time. ITC Ltd. V. Punchgini, Inc., 482 F.3d 135 (3rd Cir. 2007). Applicant's expenditures related to resumption of use are one of the factors from which intent to resume use, or lack thereof, may be inferred. Applicant's refusal to produce this evidence is therefore improper and Opposer accordingly asks that the TTAB compel Applicant to provide a full answer to this interrogatory.

B. Request For Documents

Applicant has failed to provide documents in response to Opposer's Request for Production of Documents dated April 1, 2014. TTAB rules require answers to interrogatories under oath within 30 days of service, and authorize a party to bring a motion to compel discovery where a party fails to cooperate in discovery. Opposer asks that the TTAB compel the Applicant to fully and completely respond to all requests.

Opposer notes that the Applicant is a privately owned business. Most, if not all, relevant information concerning the Applicant is therefore non-public information and is only available via the discovery process from the Applicant.

As a general point concerning all of the Applicant's requests for documents, Rule 26(b)(1) is a very broad rule in favor of discovery. A party opposing discovery bears the burden of showing why discovery should be denied, Tequila Centinela, S.A. v. Bacardi & Company Limited., 242 F.R.D. 1 (D.C.C. 2007); citing Alexander v. F.B.I., 192 F.R.D. 50, 53 (D.D.C. 2000); see also, Josephs v. Harris Corporation, 677 F.2d 985 (3rd Circ. 1982). As such, Applicant should be compelled to provide full and complete responses to the Opposer's discovery requests or be sanctioned by the Board for its failure to respond.

Applicant's relevancy objection to Opposer's Second Request for Production, request no. 4, is without merit. The request states:

4. Any and all documents that evidence, refer, or relate to Applicant's intention to resume use of the mark J.J. NORTH'S COUNTRY BUFFET.

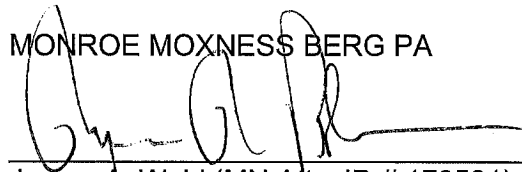
Applicant has admitted that it has closed its business and is not currently using the mark J.J. NORTH'S COUNTRY BUFFET. Whether Applicant has abandoned its mark, i.e. discontinued use without intent to resume use, may be inferred from the circumstances. 15 U.S.C. § 1127. As set forth above with respect to Applicant's refusal to answer interrogatories, the requested documents are material to the issue of abandonment. Applicant's expenditures related to resumption of use are one of the factors from which intent to resume use, or lack thereof, may be inferred, and documents relating to such expenditures are relevant to this issue. Applicant's refusal to produce the requested documents is therefore improper and Opposer accordingly asks that the TTAB compel Applicant to provide a full answer to this interrogatory.

V. CONCLUSION.

Opposer has been prejudiced in terms of pre-trial preparation and motion practice due to Applicant's failure to respond. Opposer's motion to compel and for sanctions should be granted as requested.

RESPECTFULLY SUBMITTED this 12th day of September, 2014.

MONROE MOXNESS BERG PA

A handwritten signature in black ink, appearing to read 'James A. Wahl', is written over a horizontal line.

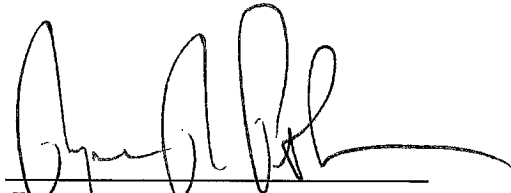
James A. Wahl (MN Atty. ID # 170501)
Ryan R. Palmer (MN Atty. ID # 340650)
7760 France Ave. S, Suite 700
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Telephone: (952) 885-5999
Facsimile: (952) 885-5969

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of OPPOSER BUFFETS, INC.'S BRIEF IN SUPPORT OF MOTION TO COMPEL DISCOVERY AND FOR SANCTIONS upon Applicant by depositing said copy in the United States Mail in a properly addressed envelope with adequate postage affixed thereon to:

Steven J. Nataupsky
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614

This 12th day of September, 2014.



Ryan R. Palmer

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MMB: 4835-6177-8206, v. 3

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Buffets, Inc.,)	Opposition No. 91212640
Opposer,)	
v.)	
STARTS CC, INC.,)	<u>OPPOSER BUFFETS, INC.'S</u>
)	<u>INTERROGATORIES TO</u>
Applicant.)	<u>APPLICANT STARTS CC, INC.</u>

To: Applicant STARTS CC, Inc., through its counsel, Steven J. Nataupsky, Knobbe, Martens, Olson & Bear, LLP, 2040 Main Street, 14th Floor, Irvine, CA 92614.

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. § 2.120), Opposer directs the following Interrogatories to Applicant and demands that said Applicant answer them under oath. These Interrogatories are to be deemed continuing; and if information is discovered after the Interrogatories are answered which would change or supplement the answers given, demand is hereby made that such information be furnished immediately upon such discovery by means of supplemental or amended answers.

INSTRUCTIONS

Opposer demands that the Applicant follow these instructions in answering the Interrogatories:

- A. The interrogatory or subpart thereof being answered shall be restated immediately preceding the answer to such interrogatory or subpart thereof.
- B. All factual information which is in the possession, custody or control of Applicant, its attorneys, investigators, agents, or other representatives or persons acting on its behalf shall be divulged.
- C. In the event an objection is made with respect to an interrogatory on the grounds that it calls for the divulgence of privileged communications between attorney and client, then said objection shall state the following:
 - 1. The date on which the communication took place;

2. The parties to the communication;
 3. The manner in which the communication took place (i.e., personal conversation, telephone conversation or written communication);
 4. The identity of any persons who were present when the communication took place or who overheard or read the communication as the case may be; and
 5. The identity of all persons to whom the communication has been divulged.
- D. In the event an objection is made with respect to any interrogatory on the grounds that it calls for the divulgence of information provisionally or conditionally protected by the limited work-product doctrine, state all facts on which you rely or will rely to support the validity of such objection.
- E. In the event that any answer to any interrogatory or subpart thereof is not applicable, or any similar phrase or answer, Applicant shall explain in detail why the interrogatory or subpart thereof is not applicable.
- F. In the event that the answer to any interrogatory or subpart thereof is unknown or you do not know, or any similar phrase or answer, Applicant shall explain in detail all efforts made by it or persons acting on its behalf to obtain information which would pertain to the said interrogatory or any part thereof.

DEFINITIONS

As used in the above instructions and the interrogatories that follow:

- A. The words “your” and “you” refer to Applicant and all persons acting on its behalf, including, but not limited to, attorneys and its associates, investigators, agents, employees or other representatives.
- B. The word “person” refers to any natural person and any association, joint venture, partnership, corporation, or other legal or business entity, its agents or employees.
- C. The word “document” means any written, recorded or graphic matter, whether produced, reproduced or stored on papers, cards, tapes, belts, or computer storage devices or any other medium in your possession, custody or control, or known by you to exist and includes originals, all copies of originals, and all prior drafts thereof.
- D. The word “identify” or “identity”, when used in reference to a natural person, means that you shall state:
1. His full name;
 2. His present business and home address;
 3. His present employer and his present position with such employer;

4. The relationship (e.g., business associates) between such persons and Applicant; and
 5. The dates of employment with Applicant, if any, and all job positions held with the Applicant.
- E. The words “identify” and “identity”, when used in reference to a document, means that you shall state:
1. The date of its preparation;
 2. Its author;
 3. The addressee or other intended recipient thereof;
 4. The persons who received copies thereof;
 5. The type of document (e.g., letter, memorandum, inventory list, work notes, etc.);
 6. Its title, heading or other designation, numerical or otherwise;
 7. The summary of its contents or other means of identifying it; and
 8. Its present location and the person who has possession, custody and control thereof.
- F. In each instance where you are asked to “identify” or “describe” a document, your description should be sufficient to satisfy the requirements of Rule 34 of the Federal Rules of Civil Procedure for District Courts, and should include, but not be limited to:
1. The fact or facts which would tend to be established by introduction into evidence of such document;
 2. The date of the making of the document and the name, address, telephone number, occupation, job title and employer of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence.
- G. “Identify” or “identity,” when used in reference to a conversation, conference or meeting, means that you shall state:
1. The date and time thereof;
 2. The location thereof;
 3. The identity of all persons participating and attending;
 4. The identity of all documents recording or summarizing or otherwise arising from the conversation, conference or meeting in accordance with the definitions above; and

- 5. The method of communication utilized (e.g., telephone, in-person communications or other means), or if the method of communication was by telephone, specify the caller and the person called.
- H. The word “facts” shall be considered to include either the singular or the plural, as the case may be, and mean a thing done, something having actual existence, an actual occurrence or event, or any information presented as having objective reality. The word “evidence” shall include facts and vice versa.
- I. The word “his” shall be considered to include either the masculine or the feminine gender.
- J. The term “concerning” shall mean relating to, referring to, describing, evidencing or constituting.

These Interrogatories are continuing in character and require you to file supplementary Answers if you should obtain further or different information after you initially answer and before trial. You are required to serve a copy of your Answers to these Interrogatories and objections thereto, if any, on the undersigned attorney for the Opposer within thirty (30) days after these Interrogatories are served on you.

INTERROGATORIES

1. To the extent not set forth in Applicant’s Rule 26(a) Initial Disclosures, identify all persons who have information or knowledge, or who you know claim to have the same, with respect to any factual matters relevant or material to the defenses of Applicant or the claims of Opposer, and for each person identified, state the subject matter of such person’s knowledge.

2. State whether Applicant has entered into any agreement permitting another person to offer or sell products or services under a mark consisting of or containing the term J.J. NORTH’S COUNTRY BUFFET. For any and each such agreement, describe the product or services authorized for sale under the agreement and identify the parties to and effective date of said agreement.

3. Describe in detail any and all products and services, including without limitation those services identified in Opposer’s U.S. Registration Nos. 2987516, 2149716, 2051197,

2051196, 2048119, 1423419, 1343558 that are, were or will be offered or sold by Applicant or any licensee of Applicant for each year from 2012 to the present under the mark J.J. NORTH'S COUNTRY BUFFET or any other mark, including:

- a. The mark under which each such product or service is, was or will be offered or sold;
- b. The nature and price of each such product or service;
- c. The intended purchasers of each such product or service;
- d. The channels of distribution for each such product or service;
- e. The date on which each such product or service was first offered and first sold by Applicant;
- f. The geographical area in which such product or service is, was or will be offered or sold;
- g. Whether such product or service is still offered or sold by Applicant; and
- h. The total annual sales in dollars and units of each such product or service.

4. State whether Applicant has received any inquiries as to whether any product or service furnished by Opposer is associated with, sponsored by, or in any manner connected with Applicant. If the answer is anything other than a categorical, unqualified no, state:

- a. The identity of the person making such inquiry;
- b. State the date of such inquiry;
- c. Identify the party to whom such inquiry was made; and
- d. Identify any documents concerning such inquiry.

5. Identify and describe any lawsuit or Patent and Trademark Office opposition (other than the present proceeding) in the United States in which Applicant is a party involving or relating to the use or registration of a mark that consist of or contains the words J.J. NORTH'S COUNTRY BUFFET.

6. Identify each item of promotional literature, sales literature or advertising produced by or for Applicant for distribution in the United States in which the designation J.J. NORTH'S COUNTRY BUFFET is referred to or appears, and for each such item of literature or advertising:

- a. State the dates of such production and distribution of each item;
- b. State the number of each item produced and the number distributed;
- c. State the categories or persons and organizations to whom copies of each item were distributed; and
- d. Identify all documents (including but not limited to purchasers, invoices, correspondence and other materials) concerning the creation of copy and layout for each item of such literature or advertising, and concerning the printing of each such item.

7. State, on a month-to-month basis, the actual advertising and promotional expenditures of Applicant from 2012 to the present relating to goods or services offered or distributed by Applicant or any licensee of Applicant in the United States bearing the mark J.J. NORTH'S COUNTRY BUFFET. For each such month, indicate the state in which such expenditures were made and the amount of the expenditures in each such state, and the amount of any such expenditures for national advertising and promotion.

8. Identify all facts, circumstances, witnesses and documents you contend support the affirmative defenses contained in your Answer and Affirmative Defense to Notice of Opposition.

9. Identify all facts and circumstances evidencing, relating to or referring to Applicant's policing efforts with respect to the J.J. NORTH'S COUNTRY BUFFET mark.

10. Identify all facts, circumstances, witnesses and documents known to Applicant evidencing, referring to or relating to any third-party use of the J.J. NORTH'S COUNTRY BUFFET mark.

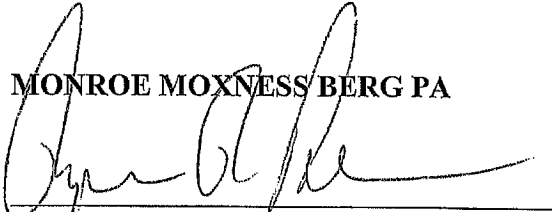
11. Identify each person whom Applicant expects to call as an expert witness and state with respect to each such person:

- a. The subject matter on which the expert is expected to testify;
- b. The substance of the facts and opinions to which the expert is expected to testify; and
- c. A summary of the basis for each opinion.

12. Identify all persons who Applicant may call to give testimony in this matter. With regard to each such person, provide the subject matter and factual matters with regard to which the witness may be asked to give testimony.

13. Identify all persons, other than counsel for Applicant, who participated in the preparation of answers or responses to these Interrogatories.

Dated this 1st day of April, 2014.



MONROE MOXNESS BERG PA

Ryan R. Palmer (MN Atty. ID # 340650)
Attorney for Opposer
7760 Franchise Ave. S, Suite 700
Minneapolis, Minnesota 55435
Telephone: (952) 885-5999
Facsimile: (952) 885-5969

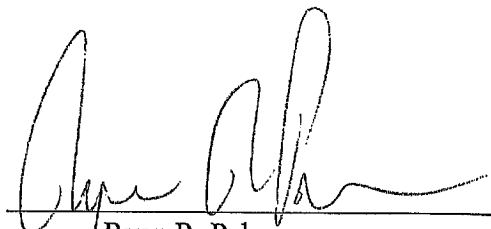
CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Requests for Interrogatories has been served on Applicant's counsel by mailing said copy on April 1, 2014, via Certified Mail, Return Receipt Requested, postage prepaid to the following address:

Steven J. Nataupsky
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614

Dated: April 1, 2014

By: _____


Ryan R. Palmer
Attorney for Opposer

Buffets, Inc.,)	Opposition No. 91212640
)	
Opposer,)	
)	
v.)	<u>OPPOSER BUFFETS, INC.'S</u>
)	<u>REQUEST FOR THE PRODUCTION</u>
STARTS CC, INC.,)	<u>OF DOCUMENTS TO APPLICANT</u>
)	<u>STARTS CC, INC.</u>
Applicant.)	
)	

INSTRUCTIONS

If any document herein requested was formerly in the possession, custody or control of Applicant and has been lost or destroyed, Applicant is requested to submit in lieu of each document a written statement which:

- ATTACHMENT 2

4. Specifies, if possible, the date on which the document was lost or destroyed, and if destroyed, the conditions of or reasons for such destruction and the persons requesting and performing the destruction.

If any documents otherwise required to be produced by this request are withheld, Applicant shall identify the document by stating its date, author, recipients and the reason for withholding.

Instructions contained in the Interrogatories served contemporaneously herewith are incorporated herein by reference as though set forth in full.

This Request for Production of Documents is continuing and any document obtained or located subsequent to production which would have been produced had it been available or its existence known at the time is to be supplied forthwith.

DEFINITIONS

As used herein:

1. "Document" shall mean any written, printed, typed, recorded by audio, video or otherwise, or other graphic matter of any kind or nature, and all mechanical and electrical sound recordings and any transcripts thereof, and computer data files in the possession, custody and/or control of Applicant, its employees, servants, agents, and counsel, or known by them to exist; it shall also mean all copies of documents by whatever means made together with any and all e-mail communications.
2. "You" shall mean Applicant or where applicable in context, its employees, consultants, representatives and agents, and all other persons acting or purporting to act on its behalf.

DOCUMENT REQUESTS

1. The originals or copies¹ of any and all documents or writings including, without limitation, all correspondence, notes, e-mails, electronic messages, memoranda, directives to personnel, agreements, reports, notices, maps, drawings, memorandum or memoranda of telephone or personal conversations, transcripts, tape or other recordings by or between the Applicant, its

¹ For purposes of this Request for Production of Documents, copies are to be produced only if originals are not available or if the copies contain notations or other matter not found in the originals.

agents or employees, or any persons acting on its behalf relating directly or indirectly to any of the matters referred to in any pleadings herein, or in any answer by Applicant to Opposer's Interrogatories served contemporaneously herewith.

2. The originals or copies of any and all correspondence, memoranda, inter- or intra-office communications or other writings by or between the Applicant, its agents or employees, or any persons acting on its behalf, relating directly or indirectly to any of the matters referred to in any pleadings herein, or any answer by Applicant to Opposer's Interrogatories served contemporaneously herewith.

3. Any and all documents identified, referred or used by Applicant in the course of preparing answers to Opposer's Interrogatories served contemporaneously herewith.

4. Any and all documents responsive to any of Opposer's Interrogatories served contemporaneously herewith.

5. Any and all documents that evidence, refer, or relate to Applicant's use of the mark J.J. NORTH'S COUNTRY BUFFET.

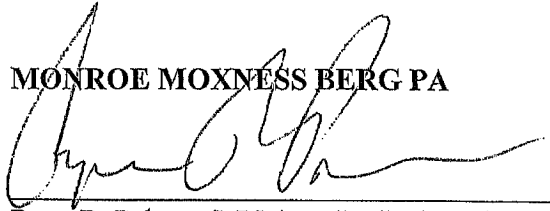
6. Any and all documents that evidence, refer to, or relate to marketing, advertising and promotional expenditures for goods or services offered or distributed under the J.J. NORTH'S COUNTRY BUFFET mark.

7. Any and all documents that evidence, refer to, or relate to Applicant's advertising and promotion of the J.J. NORTH'S COUNTRY BUFFET mark.

8. All documents or items of physical or demonstrative evidence which Applicant may introduce in this proceeding regardless of whether Applicant has made a determination whether it will actually use the document or item.

9. Any and all documents you, your attorney, or your representatives have provided to any experts, regardless of whether you plan to call said experts as witnesses in this proceeding.

Dated this 1st day of April, 2014.

MONROE MOXNESS BERG PA


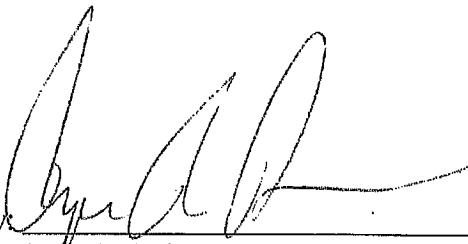
Ryan R. Palmer (MN Atty. ID # 340650)
Attorney for Opposer
7760 Franchise Ave. S, Suite 700
Minneapolis, Minnesota 55435
Telephone: (952) 885-5999
Facsimile: (952) 885-5969

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Requests for the Production of Documents has been served on Applicant's counsel by mailing said copy on April 1, 2014, via Certified Mail, Return Receipt Requested, postage prepaid to the following address:

Steven J. Nataupsky
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614

Dated: April 1, 2014

By: 
Ryan R. Palmer
Attorney for Opposer

Buffets, Inc.,)	Opposition No. 91212640
)	
Opposer,)	
)	
v.)	<u>OPPOSER BUFFETS, INC.'S</u>
)	<u>SECOND SET OF REQUESTS FOR</u>
STARTS CC, INC.,)	<u>INTERROGATORIES TO</u>
)	<u>APPLICANT STARTS CC, INC.</u>
Applicant.)	
)	

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. § 2.120), Opposer directs the following Interrogatories to Applicant and demands that said Applicant answer them under oath. These Interrogatories are to be deemed continuing; and if information is discovered after the Interrogatories are answered which would change or supplement the answers given, demand is hereby made that such information be furnished immediately upon such discovery by means of supplemental or amended answers.

Opposer demands that the Applicant follow these instructions in answering the Interrogatories:

- 1
ATTACHMENT 3

2. The parties to the communication;
 3. The manner in which the communication took place (i.e., personal conversation, telephone conversation or written communication);
 4. The identity of any persons who were present when the communication took place or who overheard or read the communication as the case may be; and
 5. The identity of all persons to whom the communication has been divulged.
- D. In the event an objection is made with respect to any interrogatory on the grounds that it calls for the divulgence of information provisionally or conditionally protected by the limited work-product doctrine, state all facts on which you rely or will rely to support the validity of such objection.
- E. In the event that any answer to any interrogatory or subpart thereof is not applicable, or any similar phrase or answer, Applicant shall explain in detail why the interrogatory or subpart thereof is not applicable.
- F. In the event that the answer to any interrogatory or subpart thereof is unknown or you do not know, or any similar phrase or answer, Applicant shall explain in detail all efforts made by it or persons acting on its behalf to obtain information which would pertain to the said interrogatory or any part thereof.

DEFINITIONS

As used in the above instructions and the interrogatories that follow:

- A. The words “your” and “you” refer to Applicant and all persons acting on its behalf, including, but not limited to, attorneys and its associates, investigators, agents, employees or other representatives.
- B. The word “person” refers to any natural person and any association, joint venture, partnership, corporation, or other legal or business entity, its agents or employees.
- C. The word “document” means any written, recorded or graphic matter, whether produced, reproduced or stored on papers, cards, tapes, belts, or computer storage devices or any other medium in your possession, custody or control, or known by you to exist and includes originals, all copies of originals, and all prior drafts thereof.
- D. The word “identify” or “identity”, when used in reference to a natural person, means that you shall state:
1. His full name;
 2. His present business and home address;
 3. His present employer and his present position with such employer;

4. The relationship (e.g., business associates) between such persons and Applicant; and
 5. The dates of employment with Applicant, if any, and all job positions held with the Applicant.
- E. The words “identify” and “identity”, when used in reference to a document, means that you shall state:
1. The date of its preparation;
 2. Its author;
 3. The addressee or other intended recipient thereof;
 4. The persons who received copies thereof;
 5. The type of document (e.g., letter, memorandum, inventory list, work notes, etc.);
 6. Its title, heading or other designation, numerical or otherwise;
 7. The summary of its contents or other means of identifying it; and
 8. Its present location and the person who has possession, custody and control thereof.
- F. In each instance where you are asked to “identify” or “describe” a document, your description should be sufficient to satisfy the requirements of Rule 34 of the Federal Rules of Civil Procedure for District Courts, and should include, but not be limited to:
1. The fact or facts which would tend to be established by introduction into evidence of such document;
 2. The date of the making of the document and the name, address, telephone number, occupation, job title and employer of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence.
- G. “Identify” or “identity,” when used in reference to a conversation, conference or meeting, means that you shall state:
1. The date and time thereof;
 2. The location thereof;
 3. The identity of all persons participating and attending;
 4. The identity of all documents recording or summarizing or otherwise arising from the conversation, conference or meeting in accordance with the definitions above; and

5. The method of communication utilized (e.g., telephone, in-person communications or other means), or if the method of communication was by telephone, specify the caller and the person called.
- H. The word “facts” shall be considered to include either the singular or the plural, as the case may be, and mean a thing done, something having actual existence, an actual occurrence or event, or any information presented as having objective reality. The word “evidence” shall include facts and vice versa.
- I. The word “his” shall be considered to include either the masculine or the feminine gender.
- J. The term “concerning” shall mean relating to, referring to, describing, evidencing or constituting.

These Interrogatories are continuing in character and require you to file supplementary Answers if you should obtain further or different information after you initially answer and before trial. You are required to serve a copy of your Answers to these Interrogatories and objections thereto, if any, on the undersigned attorney for the Opposer within thirty (30) days after these Interrogatories are served on you.

INTERROGATORIES

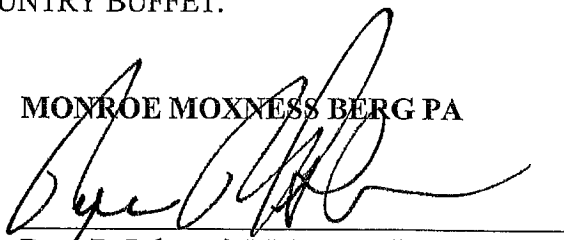
1. Describe in detail any and all products and services that were offered or sold by Applicant or any licensee or affiliate of Applicant for each year from 1997 to 2012 under the mark J.J. NORTH’S COUNTRY BUFFET or any other mark, including:

- (a) The mark under which each such product or service is or was offered or sold;
- (b) The nature and price of each such product or service;
- (c) The intended purchasers of each such product or service;
- (d) The channels of distribution for each such product or service;
- (e) The date on which each such product or service was first offered and first sold by Applicant;
- (f) The geographical area in which such product or service is or was offered or sold;

- (g) Whether such product or service is still offered or sold by Applicant; and
 - (h) The total annual sales in dollars and units of each such product or service.
2. Describe in detail Applicant's plans on resuming the use of the mark J.J. NORTH'S COUNTRY BUFFET, including, without limitation:
- (a) All steps Applicant has taken to resume using the mark J.J. NORTH'S COUNTRY BUFFET;
 - (b) The products or services that will be offered under the mark J.J. NORTH'S COUNTRY BUFFET;
 - (c) All expenditures Applicant has made from June 2013 to the present to resume the use of the mark J.J. NORTH'S COUNTRY BUFFET; and
 - (d) The expected opening date and location of any restaurant or business associated with the mark J.J. NORTH'S COUNTRY BUFFET.

Dated this 31st day of July, 2014.

MONROE MOXNESS BERG PA



Ryan R. Palmer (MN Atty. ID # 340650)
Attorney for Opposer
7760 France Ave. S, Suite 700
Minneapolis, Minnesota 55435
Telephone: (952) 885-5999
Facsimile: (952) 885-5969

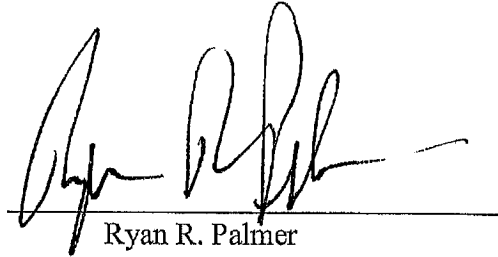
CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Second Set of Requests for Interrogatories has been served on Applicant's counsel by mailing said copy on July 31, 2014, via UPS Overnight Delivery to the following address:

Steven J. Nataupsky
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614

Dated: July 31, 2014

By:

A handwritten signature in black ink, appearing to read "Ryan R. Palmer", is written over a horizontal line.

Ryan R. Palmer
Attorney for Opposer

Buffets, Inc.,)	Opposition No. 91212640
)	
Opposer,)	
)	
v.)	<u>OPPOSER BUFFETS, INC.'S</u>
)	<u>SECOND SET OF REQUESTS FOR</u>
STARTS CC, INC.,)	<u>THE PRODUCTION OF</u>
)	<u>DOCUMENTS TO APPLICANT</u>
Applicant.)	<u>STARTS CC, INC.</u>
)	

INSTRUCTIONS

If any document herein requested was formerly in the possession, custody or control of Applicant and has been lost or destroyed, Applicant is requested to submit in lieu of each document a written statement which:

- 1

4. Specifies, if possible, the date on which the document was lost or destroyed, and if destroyed, the conditions of or reasons for such destruction and the persons requesting and performing the destruction.

If any documents otherwise required to be produced by this request are withheld, Applicant shall identify the document by stating its date, author, recipients and the reason for withholding.

Instructions contained in the Interrogatories served contemporaneously herewith are incorporated herein by reference as though set forth in full.

This Second Set of Requests for Production of Documents is continuing and any document obtained or located subsequent to production which would have been produced had it been available or its existence known at the time is to be supplied forthwith.

DEFINITIONS

As used herein:

1. "Document" shall mean any written, printed, typed, recorded by audio, video or otherwise, or other graphic matter of any kind or nature, and all mechanical and electrical sound recordings and any transcripts thereof, and computer data files in the possession, custody and/or control of Applicant, its employees, servants, agents, and counsel, or known by them to exist; it shall also mean all copies of documents by whatever means made together with any and all e-mail communications.
2. "You" shall mean Applicant or where applicable in context, its employees, consultants, representatives and agents, and all other persons acting or purporting to act on its behalf.

DOCUMENT REQUESTS

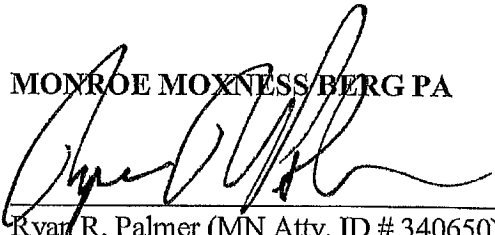
1. All documents or writings, including, without limitation, all correspondence, notes, e-mails, electronic messages, memoranda, directives to personnel, agreements, reports, notices, maps, drawings, memorandum or memoranda of telephone or personal conversations, transcripts, tape or other recordings by or between the Applicant, its agent or employees, or any persons acting on its behalf relating directly or indirectly to Opposer's Second Set of Requests for Interrogatories served contemporaneously herewith or Applicant's answers thereto.

2. Any and all documents identified, referred or used by Applicant in the course of preparing answers to Opposer's Second Set of Requests for Interrogatories served contemporaneously herewith.

3. Any and all documents responsive to any of Opposer's Second Set of Requests for Interrogatories served contemporaneously herewith.

4. Any and all documents that evidence, refer, or relate to Applicant's intention to resume use of the mark J.J. NORTH'S COUNTRY BUFFET.

Dated this 31st day of July, 2014.

MONROE MOXNESS BERG PA


Ryan R. Palmer (MN Atty. ID # 340650)
Attorney for Opposer
7760 France Ave. S, Suite 700
Minneapolis, Minnesota 55435
Telephone: (952) 885-5999
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Dated: July 31, 2014

By: 

Ryan R. Palmer
Attorney for Opposer